



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 24, 2004

Mr. Steve Aragón
Chief Counsel
Texas Health & Human Services Commission
P.O. Box 13247
Austin, Texas 78711

OR2004-7229

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 207885.

The Texas Health and Human Services Commission (the "commission") received a request for reports from the Medicaid Fraud and Abuse Detection System (the "MFADS"), specifically the printed definitions of all the "targeted queries" currently programmed into the MFADS and copies of the most recent report run for each targeted query. You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, and 552.136 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of information.² We have also considered comments from the Office of the Attorney General. *See* Gov't Code § 552.304 (permitting interested party to submit comments explaining why information should or should not be released).

Section 552.108(b)(1) excepts from public disclosure an internal record of a law enforcement agency that is maintained for internal use in matters relating to law enforcement or prosecution if "release of the internal record or notation would interfere with law enforcement or prosecution." Gov't Code § 552.108(b)(1); *see also City of Fort Worth v.*

¹We note the commission has withdrawn its arguments under sections 552.103 and 552.116 of the Government Code.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Cornyn, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that, if released, would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body that seeks to withhold information under section 552.108(b)(1) must sufficiently explain how and why the release of the information would interfere with law enforcement and crime prevention. *See* Open Records Decision Nos. 562 at 10 (1990), 531 at 2 (1989); *see also* Open Records Decision Nos. 434 at 2 (1986) (circumstances of each case must be examined to determine whether release of particular information would interfere with law enforcement or crime prevention), 409 at 2 (1984) (whether disclosure of particular records will interfere with law enforcement or crime prevention must be decided on case-by-case basis).

You inform us that (1) the MFADS is a tool utilized by the commission's Office of Inspector General (the "OIG") to detect Medicaid fraud, abuse, and waste, (2) the OIG's Medicaid Program Integrity division serves as the "investigatory arm" of the attorney general's Medicaid Fraud Control Unit ("MFCU"), and (3) information in the MFADS will be referred to the MFCU for a fraud investigation if the evidence so warrants. You also state that if the requested "definitions of the MFADS targeted queries become public, the Medicaid provider population will be aware of the thresholds established by MFADS for the identification of provider billings that are potentially fraudulent, wasteful, or abusive" and that the release of the requested report run on the targeted inquiries "would be the equivalent of publishing the names of criminal suspects before law-enforcement has had the opportunity of investigating the alleged misconduct." The Office of the Attorney General asserts that disclosure of the requested information would interfere with the MFCU's detection and prosecution of fraud because it would (1) reveal the precise behaviors being targeted and naming providers currently under investigation and (2) reveal the methodology MFCU uses to identify and prosecute fraud. Based on these representations, we conclude the commission has adequately demonstrated that the release of the submitted information would interfere with law enforcement or crime prevention. *See* Gov't Code § 552.108(b)(1); *see also* Open Records Decision No. 508 at 4 (1988) (governmental body must demonstrate how release of particular information at issue would interfere with law enforcement efforts). Therefore, you may withhold the submitted information from disclosure under section 552.108.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

³Because we are able to resolve this under section 552.108, we do not address your other arguments for exception.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

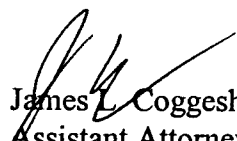
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/seg

Ref: ID# 207885

Enc. Submitted documents

c: Mr. Andrew Tilghman
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(w/o enclosures)